



STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

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ASSISTANT SECRETARY FOR HUMAN SERVICES

March 30, 2018

Dr. Dan Eichenbaum, Chair of the Board of County Commissioners
Mr. Randy Wiggins, County Manager
Ms. Karen Kephart, Chair of the Cherokee County Social Services Board

Dear Dr. Eichenbaum, Mr. Wiggins, and Ms. Kephart:

On March 19, 2018, pursuant to N.C.G.S. 108A-74(c) NC Department of Health and Human Services (DHHS) assumed temporary, direct operation of child welfare services at Cherokee County Department of Social Services (CCDSS) because Secretary Mandy Cohen determined that the CCDSS failed to provide child welfare services in accordance with law, rule and policy, and further, this failure poses a substantial threat to the safety and welfare of children in Cherokee County.

NC DHHS took this action to help stabilize Cherokee County DSS's child welfare services. Since this work began, NC DHHS have completed its initial assessment of child welfare services at CCDSS and Cherokee County has identified available County resources to support the work to ensure the families and children of Cherokee County are provided with appropriate child welfare services.

N.C.G.S. 108A-74(e) requires NC DHHS to keep the County informed of ongoing concerns or problems with the delivery of child welfare services. To support transparency and effective communication between DHHS and Cherokee County leadership attached is DHHS's initial assessment of child welfare services at CCDSS.

If you have questions, please contact me by email at Michael.Becketts@dhhs.nc.gov or by calling 919-855-4820.

Sincerely,

A handwritten signature in blue ink that reads "M Becketts".

Michael A. Becketts
Assistant Secretary for Human Services

cc: Susan Perry-Manning, Deputy Secretary for Human Services
Wayne Black, Division of Social Services Director
Lisa Cauley, Division of Social Services Deputy Director for Child Welfare
Julie Cronin, DHHS Assistant General Counsel

Initial Assessment of Cherokee County DSS Child Welfare Services by DHHS

I. Reason for DHHS Intervention with Cherokee County DSS

The North Carolina Department of Health and Human Services (NC DHHS) learned on December 11, 2017 that Cherokee County DSS (CCDSS) was utilizing a “Custody and Visitation Agreement” to facilitate the placement of children in certain protective services cases dating back to at least 2008.

In January 2018, NC DHHS required Cherokee County DSS to conduct a review of over 2,200 closed child protective services and in-home services cases dating back to January 2008 to identify all cases where a child in the case was under 18 years of age and where a Custody and Visitation Agreement was used. NC DHHS received the results of this review from Cherokee County DSS on February 26, 2018. The review found 29 cases in which a Custody and Visitation was utilized. NC DHHS issued a corrective action letter to Cherokee County DSS on March 13, 2018.

Within two (2) days of issuing the corrective action letter, NC DHHS received additional, critical information from our court and community partners in Cherokee County that revealed a systemic lack of adequate training, supervision, or capacity to deliver appropriate child welfare services and a disregard for the rights and interests of parents and children that go beyond the use of these Custody and Visitation Agreements. Further, a district court order filed on March 14, 2018 declared that Cherokee County DSS committed willful and deliberate violations of the law through the use and facilitation of these Agreements.

Considering this new information, Mandy Cohen, Secretary of NC DHHS, determined that the Cherokee County Department of Social Services was not providing child welfare services in accordance with law, rule and policy, and further, the failure to provide these services in accordance with law, rule and policy poses a substantial threat to the safety and welfare of children in Cherokee County. Accordingly, pursuant to her authority under N.C. Gen. Stat. § 108A-74(c), NC DHHS assumed temporary direct operation of child welfare services in Cherokee County on Monday, March 19, 2018.

When NC DHHS assumed operations for this interim period, the Cherokee County DSS Director was divested of her service delivery powers under N.C. Gen. Stat. § 108A-14 and all other powers under state law that pertain to child welfare services.

II. Initial Engagement

NC DHHS entered this work with a spirit of mutual support and cooperation with county leadership. Bringing Cherokee County DSS (CCDSS) into compliance with state laws and policies is requiring significant effort from both the county and NC DHHS. Partnership and collaboration with county leadership and CCDSS will ensure that the families and children of Cherokee County receive appropriate services in accordance with law and policy.

During the first days of engagement, meetings were held with county leadership, including Cindy Palmer, Director of Social Services and Karen Kephart, Cherokee County DSS Board Chairperson; County Manager, Randy Wiggins; District Court Judge, Hon. Tessa Sellers; Guardian ad Litem Attorney Advocate Larry Brown and the GAL administrators. In addition to these meetings there was a presentation to the Board of County Commissioners and to the Social Services Board. These meetings were essential to introducing members of the DHHS team to county leadership and to reinforcing our collaborative approach to our work with CCDSS.

The NC DHHS team, together with the DSS Director and DSS Board Chairperson, met with CCDSS child welfare services employees to provide information about the role that NC DHHS will have at CCDSS.

III. Engagement Strategy

NC DHHS assembled a multidisciplinary team to assume control of CCDSS to address two areas of work: (1) Child Welfare Policy and Practice and (2) Custody and Visitation Agreements. The initial focus of the work was to ensure that a new organizational structure was established with the DHHS leading child welfare services and to become familiar with existing child welfare cases to assess for risk and safety.

The chart below shows which team members' primary assignment during the initial engagement.

Staff Person	CVA	CWS
Michael Becketts, Assistant Secretary for Human Services	X	X
Wayne Black, Division Director for Social Services.		X
Lisa Cauley, State Child Welfare Director		X
Robert Cochran, Children's Program Representative		X
Brian Vogl, Children's Program Representative		X
Lyn Osteen, Children's Program Representative		X
Julie Cronin, DHHS Assistant General Counsel	X	
Gail Carelli, Assistant Attorney General	X	X

It was important to separate the work into two distinct areas to ensure that the work with restoring order to child welfare services was not impacted by the complex, legal concerns related to the Custody and Visitation Agreements.

A. Custody and Visitation Agreements

Until December 2017 CCDSS had been using a template document with wording and appearance like that of a court order, titled, "Custody and Visitation Agreement" ("CVA"). This document was utilized by CCDSS staff and was often presented to parents and caretakers as a way to transfer legal custody of a child. The use and facilitation of these agreements was done outside of the court system. Based on our review of information available, it appears that the parties signing the agreement were not independently represented by an attorney nor properly informed of the impact of signing the agreement.

Reviews of case files related to these agreements revealed that social workers were initiating the "transfer" of custody by use of these agreements and may have provided legal advice or conducted legal work under the oversight of the former CCDSS Attorney, Scott Lindsay. It appears that CCDSS considered this document a legal transfer of custody carrying the weight and effect of a court order. Once a CVA was signed, CCDSS would close their case without fully addressing the risks that caused the agency to become involved.

These agreements specified that parents turn over custody and control of their children to other family members or caregivers who were then allowed to make medical, educational, and other decisions on behalf of the child, including decisions on if and how the child would be allowed visitation with the parent or other family members.

Employees report that this was common practice until as recently as December 2017 when they were instructed by NC DHHS to cease the practice. On March 13, 2018, a district court order in Cherokee County voided all CVAs created by CCDSS on grounds that the agreements were the product of actual and constructive fraud by CCDSS, the former CCDSS Attorney, Scott Lindsay, and the DSS Director Cindy Palmer. This order may create confusion for families as now there may not be an adult who is able to make decisions on behalf of children in their care.

The process of using CVAs appears to have been started and supported by a previous CCDSS administration, which included former Attorney Scott Lindsay and continued by the current administration to also include the agency Director and CPS Supervisory staff. The use of agency resources to facilitate private custody agreements

outside of abuse/neglect/dependency does not fall within the provision of Child Protective Services and is therefore beyond the scope of a County Department of Social Services' duties and responsibilities.

Gail Carelli, Assistant Attorney General and Julie Cronin have completed a preliminary review of each of the known CVAs. There are 29 known executed CVAs that include a total of 40 children. Each of the family circumstances that led to the development of a CVA has a different fact pattern and each will require an individual review and response. Ms. Carelli is completing a more comprehensive review of the child welfare case file related to each CVA.

The plaintiffs in the lawsuit filed against Cherokee County DSS believe there are more than the known 29 cases we have identified. The court produced additional draft CVAs that were not part of the initial documents provided by CCDSS. Additionally, Scott Lindsay provide the court with a draft Power of Attorney document for one case. Further, on Friday March 23, 2018 there was a CPS report made on a family who, upon initiation of the case, the caretaker, provided one CVA (known to NC DHHS) for two children in the home and one Power of Attorney (not known to NC DHHS) for another child.

The federal Administration for Children and Families/Children's Bureau also contacted NC DHHS to inquire if (1) the CVAs have been used outside of Cherokee County, (2) federal funds were used for services related to CVAs, and (3) DHHS/Cherokee County has a plan to locate each child and have a social worker visit each family to ensure that the children are safe.

The Division of Social Services Business Office is in the process of reviewing county day sheets data to determine if any Title IV-E revenue was claimed for these children. Day sheets are used by county social services employees to account for time spent working with clients. The NC DHHS team in Cherokee County will use available data systems including Lexis-Nexis/Accurint, NCFAS, and client charts to locate families and visit each child to determine if they are safe.

Once each family has been located, depending upon their location, there will be a different strategy used for the welfare checks. For families now outside of North Carolina, child welfare agencies in other states will be contacted to assist with the welfare checks. If the family resides in North Carolina, but outside of Cherokee County, the DSS agency of the resident county will be asked to provide the welfare check. To eliminate a conflict of interest, a contract social worker will be identified to perform welfare checks for families that reside in Cherokee County.

B. CVAs - Need for additional legal support in Cherokee County Court

There are numerous cases that involve a previous judicial determination or adjudication on placement of children. There is a risk for:

- These cases do come back into the court system for appeal or further review.
- An influx of *ex parte* matters to secure temporary custody coming in related to the custody and visitation agreements.
- Potential litigation requiring the need for judicial resources related to sorting through the custody and visitation agreements.

DHHS and county leadership are working collaboratively to develop community resources to offer legal support to address custody issues related to the CVAs. Options currently being considered include:

- Roundtable discussions and consultation sessions for affected families.
- Identifying *pro bono* resources to provide consultations and legal representation for families.
- Reimbursement for legal services to affected families provided by the county.

C. Child Welfare Services

Ineffective leadership and management over the CCDSS has been central to the lack of competency in its child welfare services. The Director's leadership over child welfare services is at best described as inactive. Director Palmer describes her attention being pulled in many directions and that she placed trust in her subordinate employees to operate with integrity and follow policy. Additionally, Director Palmer failed to execute her duties as director for key procedures in child welfare. For example, when an individual is substantiated for abuse or severe neglect, law requires that he/she be placed on the Responsible Individuals List (RIL). If that person appeals to the District Court to overturn the agency's decision, the Director is required to review the case file to determine if s/he will uphold the agency's decision or elect to change the agency's decision. Ms. Palmer could not describe her process to review cases. However, she reported that she could not get the social work supervisor to manage the RIL process sufficiently to ensure her review of appropriate cases.

Ms. Palmer expected the child welfare supervisors to manage child welfare services. However, her lack of knowledge and oversight created an environment for the Child Welfare Service to deteriorate into its current state, where child welfare practice is misaligned with law, rule, and policy.

Child Welfare Services at CCDSS is divided into two units: (1) Child Protective Services/In-Home Services and (2) Foster Care/Adoption Services. Child Protective Services completes intake, investigations/ assessments and on-going In-Home Services Case Management. To understand the background of Cherokee County employees, DHHS staff reviewed each CCDSS employee human resources file, reviewed training records for each employee, solicited input from Cherokee County DSS child welfare supervisors and met individually with each employee to review cases.

1. Staffing for Child Protective Services

CCDSS has had significant issue hiring competent, qualified staff in Child Protective Services. Many of the social work staff in child protective services - including the current supervisor - started their employment as a Social Work Trainee. The trainee status is used when a person is hired into a position but meets less than the minimum qualifications, but with appropriate training and support, the hiring manager believes that they will be able to perform the duties of the position.

The Child Protective Services Supervisor has been employed with CCDSS since 2001 when he joined the team as a social work trainee. This supervisor is also at the center of the Custody and Visitation Agreements issue. He used these agreements during his time as a social worker, and once he became a supervisor in CPS/In-Home Services, 21 of the known 29 CVAs were developed by his team members, presumably at his direction and with the approval of former CCDSS Attorney Scott Lindsay. His subordinate staff indicate that they were directed to follow his instructions not to rely on policy. Furthermore, the supervisor did not hold individual case conferences with each supervisee, rather would hold group supervision weekly. Policy requires regular, documented case conferences between the social worker and supervisor.

Two people on this list are social work interns who had - but should not have - their own caseload. The students are now being provided with appropriate supervision and support. Expectations of Western Carolina University require that there be a case owner for any case supported by a BSW intern. Neither the Director nor the CPS Supervisor could clearly identify the case owner for the cases on the interns' caseloads. Robert Cochran participated in a meeting with the students and social work program leadership from Western Carolina University. They are committed to their students' success and will allow them to complete their internship with child welfare services.

Child Protective Services is in a staffing crisis. The crisis is not only about the number of people available to provide services, but the people who are completing intake, assessments and investigations are lacking fundamental knowledge and skills to perform these duties. It is likely with adequate training and supports many

of these employees may be able to adequately provide effective protective services. At this time, the NC DHHS team is providing direction and oversight to all new child protective services reports and ongoing child welfare case. This should not be a substitute for necessary remediation and capacity building for the entire child welfare team.

Child Protective Services/In-Home Services Caseload

As of March 28, 2018, in Child Protective Services there are 43 active assessment cases; 14 In-Home Services Cases. The NC DHHS team is actively reviewing all CPS and In-Home cases to determine which cases are appropriately ready for closure. Additionally, the NC DHHS team is planning to consolidate case types to allow staff to focus on either assessment/investigations or In-Home Services case management.

2. Staffing for Foster Care / Adoptions

Foster care is the more stable of the two units. Many of the challenges related to policy and practice in foster care is derived from poor practices in Child Protective Services. There is insufficient documentation transferred from CPS to Foster Care. Foster care staff describe an environment where, when a case is transferred, they must start from the beginning without the benefit of risk and safety information and documentation of casework performed by CPS staff. The lack of documentation, and lack of accurate information, is also impacting the ability of the new CCDSS Attorney, David Moore, to present evidence in court related to children in Foster Care.

There is disciplinary action in process for one foster care social worker that was started by the CCDSS Director. It is reported that the social worker did not visit a child in foster care for nearly a year. This information was reported to the agency by the foster parent to the licensing social worker during the annual licensing assessment. While there is evidence that she has not visited the child, she documented in her notes and day sheets that she did visit the child. The CCDSS Director gathered the documentation for this issue and provided it to Robert Cochran to initiate formal disciplinary action.

Foster Care Caseload

As of March 28, 2018, there are 59 foster care cases; four (4) of these are foster care 18-21 cases.

IV. Policy and Practice Issues

During the assessment of CCDSS staff and child welfare cases the team met with individual staff members including the Director, the Business Manager, supervisors, social work staff, and interns. During these meetings and case reviews with social workers and social work supervisors, the DHHS team developed an inventory of concerns indicative of the misalignment of policy and practice. The following table is representative of concerns about where practice does not align with laws, rules, or policies.

Practice/Policy Concern	Example
Locating and Navigating the Child Welfare Manual	Staff were not aware of how to find and navigate the Child Welfare Manual.
Logic, Flow, and Fundamentals of a Child Welfare Case	The staff are not able to describe how the concepts of safety, wellbeing and permanence are integrated from the point of Intake to Adoption. Additionally, the staff are not able to articulate the basics of child welfare practice, nor describe a rationale for their decision making.
Documentation	Documentation in CPS/In-Home Services records is minimal to non-existent. Policy requires that documentation is in the record within 7 days of an activity.

	<p>Many cases are lacking adequate documentation. Some cases are missing months worth of documentation.</p> <p>There is also a significant number of backlogged cases where a case decision has been made to close the case, but documentation supporting this decision has not been completed.</p>
Coercive Practices	Social work staff were not aware that statements to parents that imply that children will be placed in foster care if the parent does not follow through with social worker-imposed requirements may be perceived as threatening or coercive to the family under investigation/assessment.
Safety and Risk	
Risk and Safety Assessments	Social workers in CPS do not know the difference between risk and safety and are not able to complete risk and safety assessments required in CPS assessments in accord with policy.
Case transfers between units	There is no allegiance to policy or accepted child welfare practice when transferring cases from one person to another, or from one unit to another. The lack of information in case records would require many social workers to need to start fresh upon receiving a transfer case.
Case Decisions	CPS Assessment cases are sometimes closed without the benefit of professional evaluations and information that is needed to assess safety and risk.
Responsible Individuals List	The management of the Responsible Individuals List (RIL) is mismanaged from poor tracking of cases, lack of supervisory oversight, and the director not attending to her responsibility to ensure the accuracy of the RIL.
Court	
Role of the Court in Child Welfare Services	The staff are not able to clearly articulate the role of the Court in child welfare services.
Integrity	<p>The DSS attorney is reluctant to place CCDSS child welfare staff on the stand for testimony or to present written information as evidence because they are unable to articulate in writing or orally the rationale for decisions made and are at risk of providing inaccurate information on the stand because of significant knowledge gaps regarding policy and law.</p> <p>In the past 2 months the court dismissed four (4) petitions to bring children into foster care due to lack of evidence/poor documentation.</p>
Court Reports	Court documentation is lacking basic information that demonstrates required case work.
Business Processes Issues	
Assignment of Work	<p>The organization of the office and business process are based on the desires of staff and not the needs of the organization.</p> <p>Although many do not have the requisite training, every child welfare staff person provides coverage for Intake.</p>

	Social work interns have been assigned both too many cases as well as cases where safety and risk concerns are significantly high.
Training	Staff do not have trainings necessary required for their role. For example, the CPS supervisor has not completed Assessment and Investigation training.
Opening and Closing Cases in state systems	It is required that service cases are opened and closed in state tracking systems. The state system is updated periodically. CCDSS data (and therefore DHHS data) about child welfare cases is inaccurate.
Conflict of Interest	In the first three days following the DHHS team's arrival, there were two personal conflicts of interest situations that neither the CPS Supervisor nor Social Worker referred to another county to complete the assessment.
Border Agreement with Georgia	The staff are aware that there is a border agreement with Georgia; however, child placement practice violates that agreement when a temporary safety provider or kinship placement resource is in Georgia. Policy requires that kinship assessments are completed prior to placement. Violating the border agreement puts NC at risk of losing the agreement with Georgia.
Fair Labor Standards Act/ Employee Relations Issue	Employees have been directed to violate the FLSA. Employees have been told that they are not allowed to count specific work activities in their work hours.
Social Work Interns	The practice environment for Social Work Interns may be substandard for meeting the expectations of Western Carolina University. However, Robert Cochran attended a meeting with WCU Social Work leadership on 3/23/18 where areas of concern were discussed and sufficiently resolved in order to assure the successful completion of the affected students' field placements.

V. Legal Issues: Ongoing child welfare cases in CCDSS

In judicial district 30, which includes Cherokee County, there are 6 district court judges that preside over 7 counties. Every six months there is a court calendar put out which places the 6 judges in various counties and in various courtrooms (i.e., traffic, DV, criminal, DSS) across the district. Typically, there are only two or three days per month for DSS court in Cherokee County. The current CCDSS Attorney is working with Cherokee County under a limited contract. He is also the full-time attorney in two other counties, Clay and Macon. Below are some issues that support the need for additional legal support for CCDSS

There is a backlog of over 80 outstanding orders to be drafted for the court's review. The pending issues range from continuance orders to permanency planning orders. With regards to new and pending cases, the case files developed by CCDSS are often incomplete, inaccurate and lacking in information necessary to present a competent case to the court. As a result, CCDSS Attorney David Moore present evidence in some cases to the court until the case has been reviewed and developed further. Thus, few, if any, cases can come before the court at their upcoming scheduled court date, necessitating additional continuances. However, due to the limited availability of the court, when those cases become ready to be heard, there will be additional delays in getting them before a judge absent additional judicial resources for district 30 provided through the Administrative Office of the Courts (AOC). In addition, there is a great probability of appeals involving Cherokee County DSS cases

will increase. A rise in the volume of appellate work will be a time-consuming task and also have a significant financial impact.

The Chief District Court Judge will need to make a formal request for additional judicial support for the judicial district. McKinley Wooten of the AOC has been contacted and is looking for resources to support a request from the Chief Judge if such a request is made.

VI. Training

A review of required training records for child welfare staff reveals that some staff members are functioning in key roles without a formal training in that services area. For example, all staff in child welfare services provide coverage for Intake during the normal work week; however only four staff members have completed Intake training. To address this issue, DHHS staff have changed that business process to ensure that only those who are trained complete this task.

Most significant is the CPS supervisor has not completed Assessments/Investigation training, yet his prior role in the agency was a social worker who completed investigations/ assessments and he is currently expected to provide supervision to the CPS Assessments Team. The foster care supervisor has completed only 2 of the job-specific required trainings to be completed in the first year of service. She has been employed in foster care services since 2010.

Many social work staff have registered for trainings through the DHHS portal NCSW Learn (in-person and web-based trainings). Records show that staff either no-show or cancel their registration for approximately one-third of registered trainings.

VII. Budget

The DSS Director and Business Manager worked with Wayne Black to review the current budget to assess the amount of funds not expected to be expended by the end of the current fiscal year due to staff vacancies, underperforming contracts, and other areas.

Randy Wiggins, County Manager worked with his leadership team to review the DSS budget to identify funds that may be used to support the retraining of staff and realignment of child welfare services. According to Mr. Wiggins, he expects approximately \$180,000 of unexpended funds to be available to be available in the CCDSS budget through the end of the current fiscal year. These funds may be used to support additional, temporary staff, training, and may be needed to support an increase in the contract for the DSS attorney.

VIII. Other Program Areas

Considering the management of Child Welfare Services, there is concern if professional practice in other areas are aligned with policy. The County Manager, the CCDSS Attorney, and the DSS Board concur with the concerns of the DHHS and have asked that DHHS perform a review in all other program areas.

Under the direction of Wayne Black, Division Director of Social Services the following services at CCDSS will undergo program monitoring April 2 -13, 2018; monitoring reports will be available for each service:

- | | |
|--------------------------------|---|
| 1. Adult Care Home Monitoring | 6. Guardianship Services |
| 2. Adult Protective Services | 7. Low-Income Energy Assistance Program |
| 3. Child Care Subsidy | 8. Crisis Intervention Program |
| 4. Child Support Services | 9. Medicaid |
| 5. Food and Nutrition Services | 10. Work First/TANF |

The Special Assistance for Adults program was reviewed in early March 2018 by the Division of Aging and Adult Services. The most recent report for this service will be provided with the reports generated for the above services.

IX. Next Steps

DHHS is continuing its assessment and providing immediate, critical remedial training and education to child welfare staff. DHHS is also reviewing information and developing strategies for the most effective ways to support CCDSS and its staff toward aligning child welfare practice with laws, rules, and policy.

DHHS is also reviewing all relevant information and available resources to support our efforts to address the issues related to the CVAs and to provide necessary remedial activities to CCDSS employees in an effort to return control of Child Welfare Service to CCDSS.